ANNUAL REPORT OF THE MONTANA CONSUMER COUNSEL TO THE MONTANA LEGISLATIVE CONSUMER COMMITTEE FOR THE YEAR 1977

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The Montana Consumer Counsel herewith and hereby respectfully submits his annual report for the year 1977 pursuant to the provisions of R.C.M. 1947, 70-707(7).

CREATION OF OFFICE

Much of what follows under this and some other headings has been set forth in annual reports to the Legislative Consumer Committee for previous years. It is herein repeated for handy reference of committee members and other interested persons and has been updated in light of experiences of 1977.

The committee will recall that the office of the Montana Consumer Counsel is a creature of the Montana Constitution of 1972, which mandated the legislature to provide for such an office to represent consumer interests in hearings before the Montana Public Service Commission or any other successor agency.

At the first legislative session following the adoption of the Montana Constitution of 1972, the legislature implemented the constitutional mandate by enacting what has been codified as R.C.M. 1947, 70-701 and following. By that act, the legislature established the office as an agency of the legislative branch of government, answerable to a bipartisan committee of legislators serving as the Legislative Consumer Committee. The committee hires the Consumer Counsel and staff and authorizes appropriate major expenditures, litigation, participation in proceedings conducted by federal regulatory agencies, and hiring of expert witnesses for important cases.

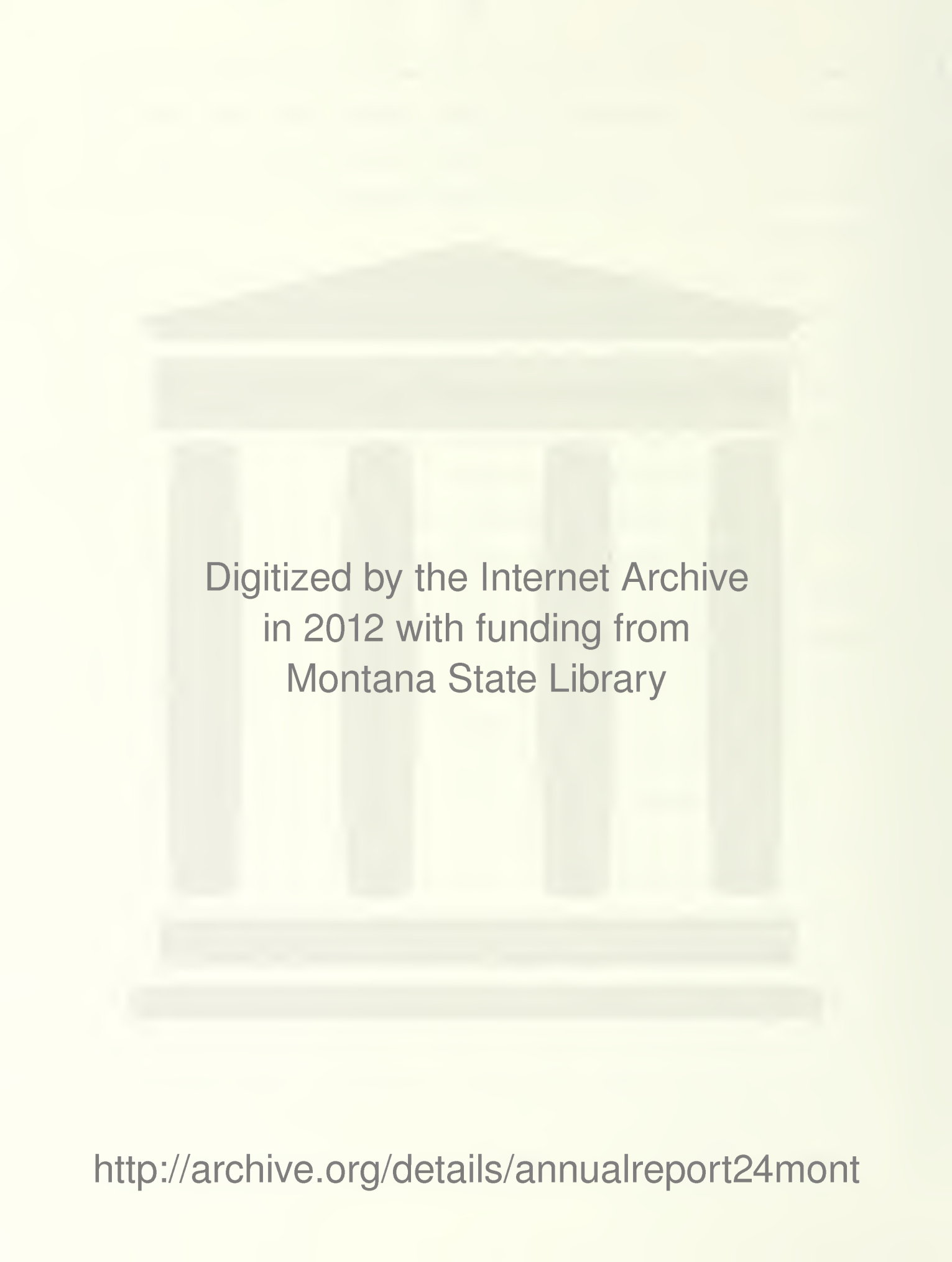
The present Legislative Consumer Committee consists of Representative Joe Quilici, democrat from Butte, Chairman; Senator Allen Kolstad, republican from

Chester, Vice Chairman; Senator Tom Towe, democrat from Billings; and Representative Earl Lory, republican from Missoula. Members usually have either been businessmen or have had business interests. Committee members are appointed each legislative session. They can succeed themselves if it is the pleasure of the appointing body.

The original Consumer Counsel Act was amended in 1974 to lend to the committee more flexibility regarding committee meeting dates and to give the office more discretion over what administrative matters the office might participate in. (The original statute mandated the Consumer Counsel to attend all proceedings conducted by the Public Service Commission. As amended, the authority is permissive and authorizes the Consumer Counsel to participate in regulatory proceedings before both state and federal regulatory agencies and courts.)

The Consumer Counsel Act was further amended in 1977 to make clear that the function of representing consumer interests in cases involving applications to increase rates shall be that of the Consumer Counsel when he petitions to become a party in such cases. In some earlier cases, there was confusion and duplication of presentation or cross purposes between the staffs of Consumer Counsel and the Public Service Commission in attempting to perform this function. The legislature in 1977, also attempted to make it clear that the Consumer Counsel has broad discovery powers in cases contested at the Public Service Commission level.

The Montana Consumer Counsel is the only such consumer agency enjoying constitutional status. It is also the only such agency functioning as an agency of the legislative branch of government, as contrasted to being an agency of the executive branch, as universally pertains elsewhere. Surveys disclose that there are an increasing number of agencies having similar functions in sister states, as well as several consumer-type agencies functioning in federal government. Bills to create such an office at the federal level have been considered by Congress. Alternative forms of agencies have been discussed briefly in previous



annual reports. Montana's approach is unique and considered the best conceptually by observers of the consumer movement, because of the autonomy of the office. The office enjoys complete independence from the administrative branch of government and the regulatory agency. It also enjoys a unique aspect of open-ended funding.

IMPLEMENTATION OF OFFICE

Under the Consumer Counsel Act, discretion reposes in the committee to implement the office and staff and approve future expansion thereof, if any. The office is now fully staffed for current functions. The staff consists of one full-time Consumer Counsel, who is an attorney licensed to practice law in Montana; one full-time salaried staff counsel, who also is an attorney licensed to practice law in Montana; one full-time salaried transportation advisor; and one full-time salaried secretary-office manager. Those positions are filled by the same persons who originally took the positions. In addition to the salaried staff, a utility advisor is retained on a monthly basis. This advisor is also the same person who was originally retained for this position. The staff is supplemented from time to time, with the approval of the committee, by the hiring of expert witnesses and occasional attorneys for major or complicated cases.

The Consumer Counsel is Geoffrey L. Brazier, of Helena, Montana, who took the position on August 1, 1973. Mr. Brazier has a background in constitutional, administrative and regulatory law and in government administration.

The staff attorney is John C. Doubek, III, of Helena, a recent graduate of the University of Montana Law School. With the heavy caseload of the office, Mr. Doubek is developing knowledge and skills in the esoteric fields practiced by the office more rapidly than most law school graduates.

The transportation advisor is Patrick F. Flaherty, formerly of Silver Spring, Maryland, who has an extensive background in motor carrier cost accounting. During his employment, Mr. Flaherty has appeared as a witness in I.C.C., C.A.B. and Montana Public Service Commission cases. Mr. Flaherty has advocated the adoption of annual

report forms for regulated motor carriers, the establishment of minimum filing criteria in motor carrier cases, and the adoption of a computer program of data reported to the Public Service Commission.

Celia Farlan continues to be the salaried secretary. The Consumer Counsel and the committee enjoy not only her professional secretarial and managerial skills, but the benefit of her experience from previous employment by the Public Service Commission.

The committee and counsel have been privileged to retain the services of William M. Johnson, of Helena, Montana, as utility cost and rate expert. Mr. Johnson was head of the utility and the centralized services divisions of the Montana Public Service Commission for many years, terminating his employment in the spring of 1974 upon advice of his physician. Mr. Johnson remains the single most knowledgable person in the state of Montana with respect to the history, present activities, structure and records of all regulated utilities, as well as of rulings and orders of the Commission and its predecessor.

The office continues to enjoy a mutually favorable relationship with Mr. Gene Carroll and Mr. Terry Whiteside of the Marketing and Transportation Division of the State Department of Agriculture. The two offices have collaborated over the years in a number of major cases involving intrastate railroad rates and railroad line and facility abandonment applications.

With respect to the hiring of expert witnesses, the regular staff of the office has been able to handle its day-to-day business. However, the committee has seen fit to continue to hire the services of Mr. George F. Hess, Consulting Engineer, of Minneapolis, Minnesota, as an expert witness with respect to recent rate increase applications by Montana's four major utilities. Mr. Hess has participated for approximately ten years in matters involving Montana's largest utilities and is familiar with their books and records and background so that he can efficiently prepare and give testimony in opposition to the utilities' cases based on generally

accepted utility ratemaking principles. It is anticipated that the Consumer Counsel will continue to rely upon Mr. Hess.

In addition to the services of Mr. Hess, and because of increasing caseload, complexity of issues, and legislative enactments, the committee has hired Dr. John W. Wilson, of J. W. Wilson & Associates, Washington, D.C., as an expert witness on behalf of consumers in major cases involving rate increase applications by three of Montana's largest utilities and one major investor-owned water utility. Dr. Wilson has testified in most cases as an expert with respect to the appropriate return on investment that should be allowed utilities under the circumstances of particular cases. Members of his staff have testified on electric and gas rate structure matters. It is anticipated that his firm could be retained in the future to present expert testimony on electric and gas utility rates.

The office has also hired Mr. Richard Gabel, of Arlington, Virginia, as an expert witness and advisor with respect to separations, allocations and rate structure in the current case involving an application by Mountain States Telephone and Telegraph Company for authority to increase rates. Thus far in the case he has presented testimony with respect to pay telephone rates and in support of Mr. Hess with respect to the telephone company's revenue needs. It is anticipated that the bulk of his testimony will be presented during the year 1978 when the Commission addresses the appropriateness of rates.

The committee has also hired Dr. Dennis Fitzpatrick, of Boise, Idaho, as a rate of return witness in two cases involving applications by Pacific Power and Light Company and its telephone affiliate for authority to increase rates in their service areas in northwestern Montana, and Mr. Robert E. O'Neil, of Salem, New Hampshire, as an expert with respect to the revenue needs, rate structure and quality of service of Northwestern Telephone Company (the PP&L telephone affiliate). Both Dr. Fitzpatrick and Mr. O'Neil submitted prefiled testimony in 1977. However, formal hearings on both cases are scheduled to start in January, 1978. It is a

possibility that other independent telephone companies may file applications for authority to increase rates during the year 1978. If this occurs, the Consumer Counsel may seek authority to hire either Dr. Fitzpatrick or Mr. O'Neil, depending upon the revenue at issue and the complexity of other issues in such cases.

Reasons for the hiring of Dr. Fitzpatrick on rate of return issues in the PP&L cases are that he is familiar with utilities in the pacific northwest, he will provide some variety in the personality of the office's witnesses, and he will add to a pool of expert witnesses in anticipation of the contingency that some witnesses customarily relied upon may have conflicts in schedules or interests.

The committee has also authorized the hiring of Mr. Richard Morgan, C.P.A., of the firm of DeVries and Morgan, Helena, Montana, as an expert witness in a case brought by the City of Billings for authority to increase water rates. This case involves increased revenue of well over $1 million and some serious issues with respect to appropriate utility ratemaking practices. Mr. Morgan was also hired in the spirit of attempting to develop our pool of expert witnesses with diversity of personalities, and in an attempt to develop local talent.

With respect to the hiring of counsel, the committee has heretofore authorized the hiring of William E. O'Leary, of Helena, Montana, who was attorney for the Public Service Commission for a period of approximately ten years, mainly to assist the office in resisting major utility rate cases.

The office has hired Mr. Thomas M. Auchincloss, Jr. of Washington, D.C., to assist it and the Department of Agriculture in litigating an appeal from an Interstate Commerce Commission decision raising rates for Montana intrastate transportation of commodities by rail and related matters. It is felt that the case involves issues of far reaching importance to shippers and carriers nationally and has the potential to go to the United States Supreme Court.

With the hiring of Mr. Doubek as staff counsel, there has been and appears to be no future occasion to hire law students for the summer.

ACQUISITION OF CAPITAL EQUIPMENT AND OFFICE SPACE

With the hiring of a salaried staff attorney in 1976, it became necessary to obtain additional office space and equipment. The office was moved to remodeled accomodations at 34 W. Sixth Avenue, in Helena. The office plans no moves in the immediate future. The only possible apparent move is one to accomodations in the state capitol complex if so provided by the State Department of Administration. There has been no dialogue on this sugject. It only seems a possibility in the light of the construction of a number of government buildings.

This year the committee authorized the rental of an IBM Memory typewriter. With the acquisition of that equipment, there appears to be no future need for any additional major office equipment.

EXPENDITURES

Functions of the office are financed by assessments against the gross intrastate operating revenues of all companies regulated by the Public Service Commission in accordance with constitutional and statutory provisions. The legislature appropriated $80,000 per year for the functions of the office for the first two years of its existence. Appropriations for the fiscal year ending June 30, 1976 were $125,753 and for the fiscal year ending June 30, 1977 were $128,397. Appropriations for the fiscal year ending June 30, 1978 are $200,000 and for the fiscal year ending June 30, 1979 are $155,717. For the fiscal year ending June 30, 1978, it became necessary for the committee in accordance with statutory authority to amend the appropriation of $150,762 to meet unanticipated expenditures for the purchase of meters for an electric load study of Montana Power Company and payment of fees of expert witnesses and counsel. It is clear that the committee will be obliged to further amend the appropriation for the year ending June 30, 1978 in order to meet developing unanticipated expenses. The experience for the year ending June 30, 1978 is too remote to anticipate at this time.

It is possible that such experiences could lead to some legislation revising

the method of financing, the method of projecting revenues, or the method of collecting revenues, as well as increasing the appropriation request to the next session of the legislature. These and related matters are being studied by the Governor's Office of Budget and Program Planning and by the Legislative Auditor.

In any event, the levy rate against regulated companies is computed by the Department of Revenue based on appropriations to the office of Consumer Counsel (as may be modified on authority of the Legislative Consumer Committee) and total gross operating revenues of regulated companies as reported to the Public Service Commission and the Department of Revenue. During 1976 the levy rate declined, reflecting increased revenues of regulated companies. However, revenues of regulated companies declined during the winter of 1976-77 because of the relatively mild climate and an effort by the Department of Revenue to purge from its records all regulated companies who had been inadvertently levied against on the basis of gross operating revenues for interstate service. The climatic conditions for the winter of 1977-78 are conjectural at this time. But, because of the increased caseload of the office, and the necessity to pay for meters for the Montana Power Company load study, there is no doubt that the levy rate will have to be increased, at least once.

Although it was foreseen that the current fiscal year would involve the greatest volume of revenue increase applications, the greatest number of applications by major regulated companies, and the most complex issues in the history of regulation in the state, there was no way of quantifying in advance the burdens upon this office for providing services of expert witnesses. The situation has been aggravated by the reluctance on the part of some major utilities to give meaningful responses to discovery such as data requests. The situation has also been aggravated by the fact that a number of major gas utilities have requested authority to increase rates on the alleged existence of emergency conditions. Also a number of Public Service Commission decisions have been appealed to the courts

as will hereafter be described in more detail. Some cases were brought by the Consumer Counsel. Most were brought by regulated companies. In many of these cases, the Consumer Counsel has appeared in defense of the Commission. Some of these cases require the services of expert witnesses to provide the courts with information on issues that allegedly were not fully developed in hearings before the Public Service Commission. All of these conditions have combined to increase the necessity for expert witnesses, and, in a few instances, outside counsel. These witnesses were paid not only for time testifying but time preparing to testify and for assistance in preparing briefs after hearing, as well as their actual travel costs.

In retrospect, it appears that this office did not adequately anticipate its expenses when submitting its proposed appropriation request to the legislature. We have no apologies because it is impossible to quantify such expenditures in advance. All we could testify to was the anticipation of an increased caseload which has been fully borne out by experience. The office has been able to control its fixed expenses but not its variable expenses. In this regard, the committee is reminded that the idea to purchase the meters for the Montana Power Company load study was not suggested by the staff, but came from extraneous sources.

With respect to the availability of funds, this office, with the assistance of members of the Governor's Office of Budget and Program Planning, made an unsuccessful application to the Federal Energy Administration for funds under Public Law 94-385, the Energy Conservation and Production Act. It does not appear that such an opportunity will be available in the balance of the current fiscal year.

Accurate predictions of future caseloads and expenses are impossible. It has been the experience of this office that the incidence of caseloads tends to subside during legislative years. However, we view it as a distinct possibility that all of Montana's major utilities will file for authority to increase rates during the fiscal year ending June 30, 1979 and for a variety of reasons. If this

occurs, and if this office is to serve its purpose, it will be necessary to hire the services of expert witnesses even during the "off" year.

Some of the causes of additional filings by the major utilities are the fact that all have or have had major construction projects pending. New generating plants have recently gone on line or will go on line in the near future. All utilities suffer inflationary pressures. The purchase price of natural gas is extremely volitile. Some companies are still adjusting to the utility ratemaking criteria adopted by the Public Service Commission in recent major utility rate cases. All of this says nothing about the possibility that a number of middle-sized utilities, such as water companies and independent telephone companies, may file rate increase applications which involve substantial amounts of revenue or complex issues. If that occurs, it will be incumbent upon the committee to decide, as a matter of priority, whether expert witnesses should be retained by the office.

The Legislative Consumer Committee has been regularly favored with copies of computer printouts supplied by the Department of Administration showing the current financial posture of the office with updated comparisons of anticipated and actual expenditures for the operation of the office. As supplementary material, the Consumer Counsel herewith submits the following summary of expenditures for the office for the months January through December, 1977 inclusive:

Salaries	$ 75,890
Other Compensation	787
Benefits	8,742
Contracted Services	180,899
Supplies	636
Communications	5,928
Travel	6,461
Rent	3,900
Other Expenses	2,115
Equipment	45,137
TOTAL	$ 330,495

Normal monthly expenditures, exclusive of contracted services for expert witnesses and outside counsel, have been $7,700.00. Unusual expenditures are the rule rather than the exception during the current year. In addition to the fees for the services of expert witnesses, the office has paid $25,172.15 for the purchase of meters for the Montana Power Company electric load study during the current fiscal year. In order to do this, it was necessary to borrow from the General Fund. We are advised that under current statutes it is necessary that this loan be repaid before the end of the fiscal year June 30, 1978. A difficulty occasioned by this obligation, the lag in collections under the current levy rate, and unusual fees for expert witnesses, has caused several government offices, including the Office of Budget and Program Planning, and the Legislative Auditor, to examine these matters. The results of their studies and their recommendations are not available as of this report.

CONSUMER COMPLAINTS

The title of the office is "Consumer Counsel". It is taken from language in the Constitution. This has lead to the assumption on the part of many people that the functions of this office include handling problems of the typical retail consumer nature. Quite predictably, the office has had numerous occasions to correct mistaken assumptions and to refer complaining parties to the Consumer Affairs Division of the Department of Business Regulation or other appropriate consumer protection agencies. At one time it was the practice to keep a count of the actual number of referrals. However, experience indicated that a great deal of otherwise more useful time was spent in documenting referrals, so the practice was abandoned. It seems safe to say that referrals during the past three years averaged more than one a day.

The Public Service Commission has created a staff position of Customer Service Representative. Referrals on relevant matters are made to her office on a regular basis. Most complaints have been disposed of without further formal difficulty.

Under the provisions of R.C.M. 1947, 70-110, as amended by Chapter 138 of the Laws of 1975, this office has delegated authority to represent parties whose utility service has been denied or terminated. We stand ready to serve in the capacity authorized, but are alert not to usurp fee-generating cases.

Although it has been our experience to date that most complaints and difficulties on these matters have been amicably resolved through the Commission's office of Customer Service Representative, we have had a number of occasions to go to contested case proceedings before the Public Service Commission and one to appeal the Commission decision to the local district court. The case in court arises from a dispute between Mountain Bell and one of its customers whether the phone company misrepresented that the cost of a design line telephone device included the operating contents. The customer declined to pay the balance owing for purchase of several design line telephones, his service was disconnected, and the phone company refused to install new service until all bills were paid. We assisted this particular customer and were successful in achieving an installation of service. The payment of the bill remains to be resolved. The significance of the case as it is presently before the court is two-fold - in spite of our statutory authority, the phone company maintained that this office was without authority to represent interested individual consumers in denial or termination of service matters, and the Commission based its decision in part on the rationale that a customer should be charged with knowledge of the full contents of all tariffs filed by the phone company with the Commission. This is a degree of knowledge that not even this office maintains on a daily basis.

Other subjects of complaint have included motor carrier claims and freight delibery delays. Because this office has no delegated authority to enforce the law or a Public Service Commission regulation, complaints have been referred to the Motor Carrier Enforcement Bureau of the Commission or to the Bureau of Motor Carriers of the Interstate Commerce Commission for handling in most cases. Experience in

handling complaints related to loss and damage claims caused this office to successfully advocate the amendment of R.C.M. 1947, 8-812, and it appears that this office was in the forefront of a broader movement because the I.C.C. has revised its regulations on the subject. California has adopted regulations on the subject. There has been a bill in Congress on the subject. Many provisions are similar to those in House Bill No. 537.

PENDING LITIGATION

At this point in time, the Consumer Counsel is involved as a party of record in cases pending before Federal courts and before district courts (that is, trial courts) in the State of Montana. Because many of these cases involve interpretations of statutes, they have potential far-reaching impacts.

The Consumer Counsel is a party of record, along with a defense group headed by the American Public Gas Association, appealing Federal Power Commission Opinions No. 770 and 770-A and resisting appeals by gas producers in federal courts. The case is presently upon application for writ of certorari to the United States Supreme Court. It involves billions of dollars to natural gas consumers nationally and approximately $4 million annually to Montana gas consumers, both by way of a direct cost to Montana-Dakota Utilities Co. and a bootstrap effect upon the "market price" provisions of contracts of Montana Power Company with Montana producers. A substantive issue is what the F.P.C. (and its successor F.E.R.C.) can rely on by way of evidence as a basis for granting increased rates to producers.

The Consumer Counsel is also one of the two parties appealing an I.C.C. decision authorizing an increase on rates charged by Montana railroads for transportation of commodities in intrastate commerce. The other appellant is the Montana Department of Agriculture. We have litigated with the assistance of Washington, D.C. counsel heretofore identified. The case is on appeal to the Circuit Court of Appeals in San Francisco. All briefs and transcripts have been filed. As we understand the rules of procedure of the court, it may either decide upon the record and briefs or

entertain oral argument before deciding. We had thought that by this time we would have learned the inclinations of the court with respect to oral argument, but have not. (The court has a reputation for the greatest lag-time between filings and decisions of any federal circuit court.) The committee will recall that the issues on appeal are whether the I.C.C. abused its discretion in not giving weight to evidence of protestants and giving weight to very sketchy and hypothetical evidence of the railroad, and whether there is any longer any defense to a Section 13 application by railroads to the I.C.C.

These same issues in the context of today's facts and revisions to the Interstate Commerce Act by the Federal 4R Act are being disputed in current P.S.C. and I.C.C. cases involving rates to be charged for intrastate service by Montana railroads. The cases have not as yet ripened for litigation. An earlier interim case had, but the office decided not to litigate in view of the priorities for the resources of the office. The legal issue is preserved and can be addressed in a future case.

As an offshoot of the case now pending in the Federal Circuit Court of Appeals, there is a case presently pending at the Interstate Commerce Commission involving the propriety of the Montana railroads action of raising their rates for intrastate shipments at a point in the proceeding when it was questionable whether the decision by the I.C.C. was final and appealable. The case involves approximately $300,000 in freight charges paid by Montana shippers. An earlier favorable decision has been the subject of a petition by the Montana railroads for reconsideration. This case has the potential for litigation if the railroads' petition for reconsideration is unsuccessful, because this is the first case to our knowledge that the Montana railroads have lost at the I.C.C. level. It certainly would go against their grain to let such a precedent stand.

With respect to district court litigation, we have heretofore reported to the committee the case in the district court of Lewis and Clark County arising from our representation of a dissident customer of Mountain Bell with respect to that utility's

failure to connect service until certain bills were paid by the customer. As a practical matter, the amount in dispute is minor and we hope that the parties can settle their differences. However, as reported elsewhere herein, the case involves some important substantive issues of law which the staff felt should be preserved lest they become chiselled in stone.

Earlier this year the Montana Supreme Court handed down a decision to the effect that there was no excuse for the Public Service Commission not making a final decision and disposing of a motor carrier rate increase application within 180 days, and that since the case was not disposed of within that time, the relief applied for by the carrier automatically went into effect under R.C.M. 1947, 8-104.5. This case, as it developed in the district court, had the potential for judicial pronouncements regarding the role of the Consumer Counsel in motor carrier ratemaking. The Supreme Court declined to comment on this subject. Although we argued that the delay was to an extent the fault of the carrier itself because of refusal to answer data requests relating to transactions with affiliates, we have to concede that there generally is no excuse for not disposing of such a case within 180 days. It is hoped that with the adoption of rules of practice and procedure by the Public Service Commission, P.S.C. staff realignment, adoption of annual report forms by the Commission, and clarification of the discovery power of the Consumer Counsel and the Commission, the events which gave rise to this case will not occur again. However, the Supreme Court's decision does suggest some remedial legislation amending the provisions of R.C.M. 1947, 70-707(3) relating to the discovery powers of the Consumer Counsel, to suspend the 180-day period if there is a dispute over discovery. This would make the statute applicable to motor carrier and railroad rate applications, as well as utility rate applications.

Two cases were filed in the past year by industrial customers of Montana Power Company to challenge the propriety of Public Service Commission orders as they related to rate structure in the sense of assigning the burden of paying increased revenue

among the utility's customer classes. The district court in Lewis and Clark County rules in one case and that ruling apparently had the effect of triggering the Public Service Commission, of its own motion, to revise the rate structure in the companion case without an order of the court or a motion by the utility or the industrial customers. The practical combined effect of the court order and the Commission's decision was to shift the burden of paying approximately $3 million in revenues of the utility from industrial customers to residential customers. The court order left the Commission with the alternative of re-opening the case under appeal to take evidence with respect to rate structure. The Commission has declined to keep that particular case open, but has let it be known that it may call for additional evidence in the pending case or entertain rate structure evidence in future cases involving Montana Power Company or in a generic rulemaking case involving all major electric utilities in the state. The Commission, as of this report, has not decided how it will proceed. However, this committee has authorized the hiring of expert witnesses on electric utility rate structure matters to provide input on behalf of consumers in the event that the Commission decides to entertain evidence on such matters in the near future.

So much for the procedural aspects of the decisions of the district court with respect to Montana Power Company's electric rate structure. Although the effect has been adverse to residential electricity customers of the utility thus far, the court's opinion is viewed as favorable in some respects. This is because the court was of the opinion that it is within the delegated authority of the Commission to base rate structures on a variety of considerations other than pure cost. The problem to the court was that it could not find sufficient evidence in the record of the case before it to support the Commission's original order regarding rate structure. At any rate, the court has now declared not only what the Commission has authority to do with respect to rate structure, but how it can properly go about doing it.

In another case involving one of the same Public Service Commission orders, the Montana Power Company appealed provisions of the order relating to an adjustment to

electric utility rate base to reflect the actual cost of constructing some of the small dams around the state when first dedicated to public service, instead of the negotiated price when acquired by The Montana Power Company or its predecessors; to investigate other aspects of the Power Company's electric utility rate base; and to certain rate structure criteria adopted by the Public Service Commission. As with several other cases, we joined in the defense of the Commission's order. The Power Company argued that the criteria adopted by the Commission were improper and that the decisions made by the Commission's predecessors in 1941 are inviolable. We argued that this is an inconsistent position for the utility to take in view of the fact that it has never had any difficulty in the interim modifying its income taxes, fair value rate base and other considerations for rate-fixing purposes. We also argued that the record clearly justifies and supports the Commission's decision in these regards; that when a utility applies for a general rate increase it opens its entire revenues, expenses and operating plant to scrutiny; and that the statute has been changed to mandate that, in rate-fixing matters, the Commission cannot assign a value to plant in service of more than original cost. It seems that one of the primary issues is the interpretation of that statute, as to what is meant by "original cost". The issues have been briefed and argued orally and decision is pending from the district court.

In another case involving issues of far-reaching importance, Mountain Bell has filed a petition in the district court in Lewis and Clark County for declaratory judgment whether certain of its statistical data with respect to competitive services and products is trade secret and therefore should be protected from public scrutiny. Both the Commission and the Consumer Counsel have joined in defense of this action, as has a supplier of competitive products and services. It is the main contention of the Consumer Counsel that under the Montana Constitution of 1972 the public has the right to know the bases for utility rates. The case comes to the district court from a decision of the Public Service Commission that it does not have authority to

compel discovery or make protective orders. This decision was made in spite of the fact that the Commission had twice before firmly declared that it could compel discovery on behalf of the Consumer Counsel and in spite of the fact that R.C.M. 1947, 70-707(3) as amended, expressly provides that "in the event of an appeal to the district court for enforcement of discovery procedures, the time limits imposed by section 70-113, R.C.M. 1947 shall be suspended pending order of the district court." In these regards, the Commission has recently adopted rules of practice and procedure speaking to discovery, including enforcement and protective sanctions. It is the unofficial opinion of certain Commission staff counsel that, since the adoption of these rules, the Commission now has those powers. Notwithstanding the possible resolution of the ancillary issue, the phone company persists in pursuit of a protective order from the court and a declaration whether its asserted relief presents a case wherein the demand of individual privacy clearly exceeds the merits of public disclosure under the constitutional right to know.

Another case pending in the district court of far-reaching implications is one involving the grant by the Commission of a temporary water rate increase to the City of Helena. This grant was made without notice to the public of the filing or the pendency of the application and under circumstances where the City Manager had publicly announced what relief he would get a week prior to the filing of his application. The case on its merits has long since been contested and it is the opinion of the Consumer Counsel that an increase to the level granted by the Commission's order on the temporary rate increase application is not justified. (It is recognized that the discretion on such matters at the administrative level reposes with the Public Service Commission.) At any rate, the temporary rate increase was appealed on the theories that the Administrative Procedure Act, the citizen's right of participation, and the Public Utility Act all deal with the subject of utility ratemaking and should be applied and interpreted in pari materia, that is, together; that the Administrative Procedure Act and the right to know mandate that citizens be

accorded notice of the pendency of an application for a temporary rate increase and that the Commission could not have acquired jurisdiction over the subject matter until it notified the customers of the utility of the pendency of the proceedings, otherwise due process was violated. To our surprise and dismay, the district court glossed over some of our contentions and ignored others, focusing on one phrase of the Public Utility Act. Perhaps the amounts at issue are not worthy of serious litigation, but, as we predicted, the precedent of the court's decision came home to roost when the Commission recently shifted the electric rate burden for Montana Power revenues in the amount of $3 million from industrial customers to residential customers, again without notice to the public or the Consumer Counsel. In the opinion of the Consumer Counsel, unless the district court's opinion is reversed on appeal, or unless the Commission adopts and follows some rules relating to the handling of temporary rate increase applications which provide for notice; or unless the legislature speaks to the problem, it will recur. To the extent that it recurs, the Consumer Counsel will be unable to function on behalf of the consuming public as contemplated by the constitutional fathers because we won't even know of the pendency of proceedings.

Anticipating this problem, this office has filed an application with the Public Service Commission to adopt rules of practice and procedure as they relate to temporary rate increase applications. Hearing has been had on that petition. We are advised that rules are presently pending publication and filing with the Secretary of State. It remains to be seen whether the adoption of these rules will dispose of the issue in the court case and negate the desirability of appealing to the Supreme Court. If rules are handed down, the merits of appeal of the Helena Water case will be put on the agenda of future committee meetings for consideration.

Another case pending before the District Court in Lewis and Clark County which has far-reaching implications is one on appeal from a Public Service Commission decision in a general rate increase application of Montana-Dakota Utilities Co.

The aspect of concern in the case is that the utility seeks to introduce evidence on subjects upon which evidence was received from both the utility and contesting parties at the administrative level. The case was heard by the Commission under the Administrative Procedure Act. The petition of MDU on appeal makes reference to the Administrative Procedure Act, but purports to rely on a phrase in the Public Utility Act which sanctions the entertainment of evidence by the district court. In our opinion, the issue is another one which involves application and interpretation of the statutes in pari materia, that is dealing with the same subject.

Both the APA and the PUA statutes dealing with appeals from Commission orders appear to permit the court to entertain evidence under certain circumstances. It is our contention that evidence should be new and additional and there should be good reason why it was not offered to the Commission, particularly when the subject matter of the evidence was also the subject of evidence offered to the Commission. What is insidious about this case is that MDU seeks to offer evidence occurring two years or more after the close of the test year relied upon by it and only on selective accounts, thereby in effect causing mismatches of revenue and expenses. The committee has authorized this office to resist the case and to present evidence in opposition to that offered by the utility. Hearing by the court is pending in January.

Another case pending in the District Court in Lewis and Clark County is an appeal by the Milwaukee Railroad from a decision by the Commission refusing to authorize it to abandon its station at Drummond, Montana. At the request of certain legislators, this office was authorized to intervene as a defendant in support of the Commission's decision, notwithstanding that we did not participate at the administrative level. At issue is the constitutionality of a statute unique to Montana which requires that railroads maintain and staff at least one station

in every county through which their lines pass. It was argued that this protection of railroad facilities should be preserved in view of the fact that Montana is the only state which has not adopted a rail plan under the Federal 4R Act.

Another case of importance was one involving a recent decision by the District Court in Lewis and Clark County to the effect that, with one obscure exception, the Public Service Commission does not have jurisdiction over rates charged by municipalities for sewer service. It was the intention of the committee in authorizing this litigation to obtain a court ruling on the issue in view of the number of bills in the legislature on the subject. Having obtained the court decision, it was the pleasure of the committee not to litigate this particular case further. However the Consumer Counsel was instructed to monitor a case involving similar issues which is understood to be on appeal to the Supreme Court, and to report on the merits of participating in that case as a friend of the court.

Another case which the office was authorized to appeal to the District Court in Lewis and Clark County involved a decision by the Public Service Commission on a rate increase application by Burlington Northern Transport. Having heard the testimony and arguments of the motor carrier, the Commission staff objected to participation and opposition by the Consumer Counsel, but entertained briefs. After reviewing the briefs, the Commission adopted a rate structure at variance with the presentations of either the motor carrier or the Consumer Counsel. This decision came during the time the District Court of Lewis and Clark County was reviewing an appeal by industrial customers of Montana Power Company. The question whether the Commission must base its rate structure decisions upon evidence of record was then before the court. Accordingly, because of the absence of the record and in light of the recent decision of the district court on a related matter, staff sought authority to appeal. The case is presently pending filing by the Commission of a transcript of Commission proceedings.

Other cases are pending in the district court, but appear to have been resolved.

Two involve Burlington Northern and were commented upon in the 1976 annual report. Reference is made to the Commission order authorizing Burlington Northern to levy a minimum charge on small shipments of the level charged for 6,000 lb. shipments when it was not clear from the record that substitute or alternative service was available to all small communities formerly served by Burlington Northern. Another involved a decision by the Commission refusing to authorize dualization of agency stations at Brockway and Circle. As reported in 1976, in view of the Federal 4R Act, and in view of the fact that regulation is a continuing matter and the railroads can always file another application for dualization or similar relief, the case has little, if any, far-reaching implications. A third case involved an appeal by Cut Bank Gas Company from a Commission order failing to grant increased revenues to the amount requested. This case likewise seems to have been disposed of by later events.

ADMINISTRATIVE HEARINGS

Prior to July 1, 1974, under statutory mandate, it was incumbent upon the Consumer Counsel to attend all hearings conducted by the Commission. The statutory mandate proved to be self-defeating, because its effect was to burden the Consumer Counsel with attending many hearings involving motor carrier operating authorities where competition usually contested the applications and asked the relevant questions. This mandate necessitated the unnecessary expenditure of time and travel money to observe proceedings which were almost perfunctory in nature. The 1974 Legislature changed the provision, with the result that this office did not attend as many hearings as it did during the first year of its operation. However, there have recently been many more hearings than normal law offices in Montana handle in several years, and many of them have been of several weeks' duration.

During the past year, this office has participated in or is participating in four matters before the Interstate Commerce Commission involving transportation rates. Notice of filing has been given by the Milwaukee Railroad with respect to

anticipated abandonments of trackage in Montana and this office has been authorized to participate in one such proceeding. There have been no new matters with respect to Civil Aeronautics Board and Federal Power Commission proceedings, but some of those reported in 1976 are still pending.

In addition to court matters, which are commented on in detail elsehwere herein, this office has participated in or is participating in two proceedings before the Public Service Commission involving railroad rate increase applications, one involving a railroad abandonment of livestock service, seven involving railroad station abandonment or realignment applications, and one involving a petition to abandon approximately 70 stockyards. Approximately 25 motor carrier rate cases were participated in and two applications to curtail motor carrier service were contested.

With respect to utilities, this office has been involved in approximately 35 contested utility rate increase cases and two cases relating to establishment or termination of service to individual customers.

In addition thereto, this office has participated in four rule-making proceedings conducted by the Public Service Commission.

It is estimated that this office participated in cases in 1977 which resulted in the saving of rates for transportation service by both rail and motor carrier of over $4,300,000. It is also estimated that this office participated in cases involving the saving of rates for utility service of $62,000,000. Cumulative total savings of the office to date are estimated to be approximately $105,000,000.

Additionally, there are pending before the Commission applications to increase rates for utility service in the cumulative total annual amount of approximately $13,000,000. It remains to be seen what the end result of those proceedings will be, but in most cases it appears that the only meaningful substantive opposition to the proposed increase or the only substantive evidence for a lesser increase will be presented by the office of Consumer Counsel.

ASSOCIATION ACTIVITIES

In our annual report for the year 1976 and in earlier reports, we commented at length about the activities of the office and staff in a number of associations or councils concerned with subjects that the office deals with, such as utility and transportation regulation.

Because the caseload has curtailed our participation in such activities, we will forego an in-depth report, except to observe that the Transportation Council of the Federation of Rocky Mountain States and the Governor's Task Force on Coal Gasification appear to have dissolved. Otherwise, our activities in the Association of Interstate Commerce Commission Practitioners, National Association of Regulatory Utility Commissioners, and Shippers National Freight Claim Council are in a state of suspense and will be for the foreseeable future.

ANTICIPATED CASES AND PROJECTS

In our 1976 report under the above title, we anticipated assisting in development of meaningful consumer input under the Railroad Revitalization and Regulatory Reform Act of 1976. With the rejection by the legislature of a state rail plan, that effort failed to materialize. However, in its place looms the spectre of a series of petitions by Montana railroads to the I.C.C. for authority to abandon substantial mileage of track. In fact, as of this report, the Milwaukee Railroad has served notice of two such applications. This committee has authorized resistance to one such application. This could well be the tip of the proverbial iceberg. In anticipation of that possibility, the office is proceeding to familiarize itself with the appropriate procedure and substantive criteria for decisions of such cases.

Ongoing cases of importance are reported under "Pending Litigation".

The Public Service Commission has now adopted rules of practice and procedure. Assuming that they become effective in due course, the effort by this agency thereafter will be the comparatively passive one of being alert for experiences

under the new rules upon which suggestions could be made at an appropriate future time for revising and enhancing the rules.

The Public Service Commission has conducted a hearing but has not as yet adopted rules of practice and procedure as pertain to petitions by utilities for authority to increase rates on a temporary or interim basis. Depending upon whether and in what regards the Commission acts, it is possible that this office will continue to pursue the matter through the courts or the legislature.

Other realms of rule-making which this office supports and will continue to support are the adoption by the Public Service Commission of minimum filing requirements for a variety of motor carrier forms of relief, such as operating authorities, license transfers and rate increases, including, but not limited to, those by tariff bureaus (collective rate-making).

There is also the project of encouraging the Commission to computer program data derived from annual reports, particularly that of motor carriers, so that it can issue statistical reports and have available for quick retrieval, historical data from which to evaluate supporting data in new rate increase applications.

Emperical and useful data from The Montana Power Company load study is not anticipated until 1979, but the study will continue through 1978.

We hesitate to speculate on possible future utility rate increase applications and the issues involved, except to observe that most of the major utilities have substantial new plant in construction, have volatile gas supply costs, and are undergoing a transition to the Commission's new utility rate-making criteria, as well as experiencing inflation. These circumstances combine to suggest a continuing comparatively high frequency of utility rate increase applications through the fiscal year 1979.

REMEDIAL LEGISLATION

Under the provisions of R.C.M. 1947, 70-707(7), the Consumer Counsel may recommend remedial legislation to the Legislative Consumer Committee. The obvious

result of such procedure will be that if recommendations are viewed favorably, bills will be drafted, introduced and carried by committee members. There has been little past experience to develop a custom, practice or policy as to how the committee should proceed with the matter of remedial legislation. It therefore is open to this committee to review the recommendations of the Consumer Counsel, revise them, and decide whether any of the proposed bills merit being enacted into law. If the decision is favorable, an acceptable bill may be drafted by either the Consumer Counsel or the Legislative Council and introduced and carried by one or more committee members. Aside from that, there is no prohibition in the Consumer Counsel Act or elsewhere against an individual committee member or any other legislator from suggesting bills himself or proceeding on his own to support or oppose recommended bills or bills of a similar nature treating the same subject.

During the 1977 session, the Legislative Consumer Committee met with the Public Service Commission on recommended remedial legislation of mutual concern after which the committee agreed to introduce, sponsor and carry four bills. An individual committee member decided on his own to introduce and carry two other bills recommended for remedial legislation, but in modified form. Two of the bills introduced by the committee passed and were signed into law after amendment. One of those dealt with the discovery power of the Consumer Counsel at the Commission level. The other involved a mandate from the legislature to the Commission to adopt rules of practice and procedure. One of the bills carried by the individual committee member clarified the respective roles of the Consumer Counsel and Commission staff in cases pending before the Commission and was signed into law.

In addition to supporting the bills spoken of herein, the Consumer Counsel served as a resource to legislative committees, particularly judicial and business and industry committees. It is hoped that input from this source aided the legislature in congealing for favorable action on a number of bills relating to utility and transportation regulation.

This report coming at a time approaching a year when the legislature is not in session, it might appear that the subject of remedial legislation could be touched upon lightly herein. However, frustrations with inconsistent actions by the Public Service Commission have suggested a variety of subjects which might be worthy of remedial legislation. Experiences not directly related to Public Service Commission actions have suggested additional possible subjects of remedial legislation.

Of paramount concern to this office is the temporary utility rate increase matter. The committee will recall that temporary rate increases have their roots in the legislature's response to a recent Supreme Court decision that automatic adjustment clauses and other self-implementing utility rate practices were proper under Montana law. The legislature in 1975 passed a bill amending R.C.M. 1947, 70-113 to provide that thereafter no utility rate increases would be granted without procedures in accordance with the Administrative Procedure Act, including notice and hearing. Unfortunately, in transit the bill was amended to provide that the Commission have authority to grant temporary rate increases. This amendment was adopted in recognition of the difficulties that small gas utilities purchasing their supplies from Montana Power would have in adapting to immediate substantial cost increases after the Power Company is granted a rate increase. This purpose seemed laudible and to the extent that the statute has applied to those small gas utilities, it has worked.

However, with respect to other utilities in Montana, the statute has occasionally worked to circumvent due process and Administrative Procedure Act protections and subvert the functions of the Consumer Counsel. In many cases, it has resulted in major utility rate increases without any knowledge or participation by any customers of the utility. To our knowledge the Commission on final order has never changed that revenue level granted by temporary order in any docket.

In its brief and stormy history, the statute has been the subject of litigation (there have been at least two cases involving this office relating to the interpretation or application of the statute), legislative amendment (Chapter 467 of the Laws of 1977), several unsuccessful bills in the recent legislature, and controversial publicity. One of the aspects of the rewritten statute is to provide that the Commission has "discretion" to temporarily approve increases pending a hearing or final decision. This word was inserted in response to another recent Supreme Court decision overruling a Public Service Commission temporary order granting part of the amounts of increased revenue requested by Montana Power Company. The word "discretion" has been applied by the Public Service Commission to encompass not only substantive decisions as to the merits and amount of proposed rate increases, but to procedural handling of applications so as to subvert participation by interested parties.

Obviously, the language of this statute, of itself, is open to some interpretation. One court has chosen to apply the statute in a vacuum and without regard to due process protections, right of participation protections, right to know protections, or Administrative Procedure Contested Case protections.

We submit the following as a list of temporary rate increase applications and abuses that have occured since the statute (which was a concession to small gas utilities) was enacted:

> Recently the City of Helena applied for a temporary rate increase which was granted without notice to or participation by any member of the public or the Consumer Counsel. The full contested case proceedings which occured some months later disclosed serious questions whether the temporary rate increase was based upon generally-accepted utility rate-making criteria. The temporary rate increase application order was appealed in district court. Litigation is pending. Now, six months after

full hearing, the Commission has not issued a final order. The district court initially granted a stay order, but later reversed itself and let the temporary rates go into effect retrospectively.

In the biggest major utility rate case in history, the Public Service Commission granted Montana Power Company authority to collect approximately $25 million in increased revenue. Two utility customers challenged the propriety of notice of the proceedings. Upon appeal to the district court and without waiting for a decision of the district court, the Commission without notice to consumers or the Consumer Counsel, revised the rate structure provisions of its temporary order and shifted the burden of providing $3 million annually in revenue from the utility's industrial customers to the utility's residential electric customers. In this docket, the Power Company has submitted three applications for temporary rate increases.

Mountain Bell has recently filed for a general rate increase and applied for a temporary rate increase. Its first application was denied. It has reasserted its request and presumed to base it upon certain revisions in rate structure, although it was upon motion of Mountain Bell that consideration of rate structure be deferred until a later time. This application was made at a time shortly before a public announcement was made by the management of the company that earnings per share for the company had increased.

In a case involving Martin City Water Company, a commissioner acting as hearing examiner heard the case in Martin City. On the next day, the remaining commissioners in Helena, in the absence of the hearing examiner and a transcript of the proceedings, granted a temporary rate increase. This violates the MAPA procedure.

Butte Water Company, a subsidiary of Anaconda Company, which in turn is a subsidiary of ARCO, has twice applied for temporary rate relief. To its credit, it deferred its second application until after consumers had an opportunity for hearing.

The same circumstance applies to Pacific Power and Light Company and its telephone subsidiaries serving northwestern Montana, Northwestern Telephone. Both utilities have applied for temporary rate increases pending hearing and after those applications were denied, have applied for temporary rate increases immediately after hearing.

Montana-Dakota Utilities Co., Montana's other major electric and gas utility, has regularly applied for temporary rate increases.

The City of Billings Water Company has applied for approximately $600,000 in increased revenue by way of temporary relief for anticipated revenue deficits, notwithstanding that it has a general rate increase application pending.

Many temporary rate increase applications have been filed since the effective date of Chapter 435 of the Laws of 1977, the statute permitting proposed utility rates to go into effect if the Commission does not decide within nine months.

These don't appear to be te results contemplated by the legislature in enacting what appeared to be an innocuous little escape-hatch for small Montana gas utilities.

These cumulative circumstances tending to subvert the hearing process, have caused this office more consternation than all other issues and controversies combined. The dilemma what to do has suggested approaches on all fronts. Therefore, we have petitioned the Commission to adopt rules which would safeguard the hearing process on temporary rate increase applications. The rules we propose merely provide the opportunity for hearing and do not mandate an automatic hearing. They also suggest shortening of time and notice, and some preliminary filing requirements calling for a convincing showing of the need for immediate relief -- something of an emergency nature.

In the course of events, two other issues have surfaced. In litigation brought by Montana Power Company's industrial customers and in cross-examination of Mountain Bell's management on the merits of their application for a temporary rate increase, the question was raised which source is responsible for paying a rebate in the event that it is decided that increased rates are improper as to only one customer class of the utility and not as to all customers. Two suggested interpretations are either that the utility itself must pay the rebate or that all of the other customer classes must pay the rebate. This poses the ancillary question whether the rebate can be charged retrospectively. (Naturally and obviously, this office has taken the position that the utility is responsible for the rebate and there can be no retrospective imposition of rates.)

An additional issue raised is whether the Public Service Commission, in granting a temporary rate increase, can revise rate structure. It did this to a limited extent in granting Helena Water its temporary rate increase. It did this

to a substantial extent when it voluntarily revised Montana Power Company's electric rate structure recently. However, in deliberations upon a motion by this office for reconsideration of its order revising Montana Power's electric rate structure (the deliberations occuring approximately one week after the order revising the rate structure), Commissioner Gilfeather commented that it was his opinion that the Commission did not have authority to revise rate structures in temporary rate increase matters. This appeared to this office to be a gross inconsistency.

A variety of remedial legislation is suggested, none the least of which is to repeal all provisions of R.C.M. 1947, 70-113 relating to temporary rate increases. Another would be to limit its application to utilities which rely upon other utilities for their sources of energy. Further revisions suggested by the circumstances are to amend the statute to provide that the Commission, after hearing limited to that purpose, may grant a temporary rate increase. It also comes to mind that the open meeting law could be amended to make clear that agenda notices are not to be treated as notices of deliberations on substantive issues. The provisions of R.C.M. 1947, 82-4226 (The Administrative Procedure Act) could be amended to provide that the people of Montana be afforded a reasonable opportunity to participate in the operation of a governmental agency prior to the final decision of the agency, or prior to a decision changing rates or making other substantive determinations of rights, etc.

A variety of other possibilities speaking to the subject include a bill requiring copies of all applications by utilities that are filed with the Public Service Commission be filed with the Consumer Counsel and that the Commission not be authorized to act for any purpose for a specified period of days, or that the Commission must provide an opportunity for hearing on any proposed utility revenue increase of over a specified percent, such as three or five percent. The legislature could also provide that notice of meetings or tentative agendas are not a

substitute for notice under the Administrative Procedure Act and other statutes dealing with contested case procedures of state agencies.

It seems obvious in the light of the confusion surrounding the subject that if the legislature decides to retain a provision relating to temporary rate increases, it should clarify whether the Commission, on temporary rate increase applications, can revise rate structure. It also seems obvious that if a statute in some form is retained, the question who is responsible for the rebate in the event that rates to less than all of the customer classes of the utility are found unreasonable.

Another subject that is worthy of legislation which we have commented elsewhere upon herein is to amend what is now R.C.M. 1947, 70-707(3) speaking to the discovery power of the Consumer Counsel to make clear that the deadlines for Commission deliberation under railroad and motor carrier statutes are also suspended pending order of the district court on review of the propriety of discovery.

Another legislative amendment suggested by recent events is to extend the ex parte provisions in Section 82-4214 (The Administrative Procedure Act) forward to prohibit ex parte consultations between the persons who are charged with the duty of rendering decisions and any parties to contested cases from when the case is in the preparation stage, and not just after notice of hearing.

The committee might also consider legislation to make clear that increased rates operate only prospectively and not retrospectively. In spite of broad-brush denials by Anaconda Company, this is exactly what happened in a recent decision by the Public Service Commission to transfer substantial burden of providing the Power Company with increased revenue from industrial customers to residential customers. It was done in spite of having made an earlier pronouncement in Order No. 4328, Docket No. 6445, involving MDU, to the effect that retroactive rate-making is undesirable. It also was done by the judge in the Helena Water case. Circumstances suggest a need for clarification, possibly by remedial legislation.

It is our understanding that the Legislative Auditor, the Governor's Office of Budget and Program Planning, and the Department of Revenue, are studying the difficulties that arise from our open-ended funding and may be suggesting statutory changes which make the process more compatible with other laws and regulations relating to public finance and yet preserve the viability of the office as a resource on behalf of the public. We don't view the subject matter as appropriate for "remedial legislation" as it does not deal with substantive regulation of utilities and transportation companies. However, we welcome such suggestions and will pass them on to the committee immediately upon receipt.

CONCLUSION

The foregoing limited litany of frustrations with respect to inconsistency of Commission actions is not intended as a meat ax castigation of its activities. The legislature has mandated an annual report from this office and permitted the recommendation of appropriate remedial legislation. By nature, the report must be in response to the experiences of the office. The recommendations of remedial legislation permits some constructive suggestions with respect to difficulties. Obviously, a law suit at every instance is not the most productive or congenial way to proceed. Neither is rhetoric.

There has been progress made by the Commission since the last session of the legislature. For example, although late and maybe not all that this office would want to see, the Commission has proceeded with the adoption of rules of practice and procedure. It has adopted annual report forms for regulated motor carriers. It has instituted some procedures which should expedite its caseload management, narrow issues for hearing, and make for a cleaner record of proceedings. It has adopted what we consider to be improved substantive rate-making criteria. Finally, it has appointed an administrative manager. Although its internal functions under this new staff structure have not leveled off, there are signs that the future will involve less difficulty over meaningful opportunity for the Consumer Counsel and the

public to know and participate in Commission deliberations on substantive issues, and involve fewer distracting procedural issues. If so, the result will be that this office can concern itself primarily with substantive rate case presentations and the regulatory process will move forward.

Respectfully submitted,

Geoffrey L. Brazier

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